THE HONOURABLE SRI JUSTICE J. CHELAMESWAR
AND
THE HONOURABLE SRI JUSTICE D. APPA RAO

W.P.Nos. 12542/2006, 12543/06, 12544/06, 12545/06, 12546/06, 12547/06, 12548/06, 12549/06, 12550/06, 12551/06, 12552/06, 12553/06, 12554/06, 12610/06, 12632/06, 13148/06, 13300/06, 13522/06, 13585/06, 13631/06, 13884/06, 13897/06, 14244/06, 14264/06, 14281/06, 14283/06, 14314/06, 14340/06, 14357/06, 14407/06 14417/06, 14419/06, 14444/06, 14451/06, 14453/06, 14466/06, 14572/06, 14599/06, 14712/06, 14887/06, 14889/06, 15090/06, 15092/06, 15380/06, 15388/06, 15420/06, 15435/06, 15437/06, 15440/06, 15441/01, 15462/06, 15475/06, 15499/06, 15504/06, 15834/06, and 16171/06

Dated: 10.08.2006

W.P. No. 12542 of 2006

Between:-

M/s Premier Travels, a registered Partnership concern, having its office at 3/6/307, Hyderguda, Hyderabad –29 represented by its Managing Partner
Mr. Syed Sarosh Inayathullah and others

…Petitioners

And

State of Andhra Pradesh, Department of Transport, Secretariat, Hyderabad represented by its Secretary and others

…Respondents

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14340/06, 14357/06, 14407/06 14417/06, 14419/06, 14444/06, 14451/06, 14453/06, 14466/06, 14572/06, 14599/06, 14712/06, 14887/06, 14889/06, 15090/06, 15092/06, 15380/06, 15388/06, 15420/06, 15435/06, 15437/06, 15440/06, 15441/01, 15462/06, 15475/06, 15499/06, 15504/06, 15834/06, and 16171/06

COMMON ORDER (per Hon'ble Sri Justice J. Chelameswar)

This batch of writ petitions raise a common question of law. The various petitioners challenged the constitutional validity of Motor Vehicles Taxation Ordinance No. 3 of 2006, by which certain amendments are made to Andhra Pradesh Motor Vehicles Taxation Act, 1963 (for short 'the Act').

Essentially the challenge is confined to sub-section (2) of the Ordinance by which the second proviso to Sub-section 2 of Section 3 of the Act, is substituted and a consequential amendment to Schedule III of the Act is also made by the Ordinance. Section 3 of the Act, prior to the amendment by the impugned Ordinance read as follows:-

> " **Levy of tax on Motor Vehicles**: (1) The Government may, by notification, from time to time, direct that a tax shall be levied on every motor vehicle used or kept for use, in a public place in the State.
>
> (2) The notification issued under sub-section (1) shall specify the class of motor vehicles on which, the rates for the periods at which, and the date from which, the tax shall be levied:
>
> Provided that the rates of tax shall not exceed the maximum specified in Column (2) of the First Schedule in respect of the classes of motor vehicles fitted with pneumatic tyres specified in the corresponding entry in Column (1) thereof; and one and a half times the said maximum in respect of such classes of motor vehicles as are fitted with non-pneumatic tyres.
>
> Provided further that in the case of motor cycles (including motor scooters and cycles with or without attachment), invalid carriages, motor cars and jeeps and other non-transport vehicles not exceeding 2,286 kgs in unladen weight except omni buses and chassis of motor vehicles, the tax shall be levied at the rates specified in the Third Schedule.

Provided also that in respect of a chassis of a motor vehicle passing through this State, from a manufacturer to a dealer under a temporary certificate of registration for a period not exceeding seven days, the rate of tax shall be one-twentieth of the tax payable for a quarter.

Provided also that in respect of Motor vehicles operated with Battery/compressed Natural Gas/Solar Energy, no tax shall be levied for a period of five years from the date to be notified."

The second proviso to sub-section (2) is sought to be substituted as follows, by the impugned Ordinance.

"Provided further that in the case of motor cycles (with or without attachment), invalid, carriages, motor cars and jeeps and other non-transport vehicles not exceeding 2286 kgs. In unladen weight and omni buses with a seating capacity of (8) persons or more in all but not exceeding (10) ten persons in all, High End Motor Cabs of the cost of three lakhs fifty thousand and above, the tax shall be levied at the rates specified in the third Schedule.

Provided also that in the case of Road Roles the rate of tax shall be levied at the rates specified in the Fourth Schedule.

Sub-section (1) of Section 3 of the Act authorizes the Government to direct that the tax shall be levied on every motor vehicle used or kept for use in a public place in the State. The Government is required to issue such directions by publication in the Official Gazette. Sub-section (2) further stipulates that the notification contemplated in sub-section (1) shall specify the class of motor vehicles, the rates of taxes and the periods for which such tax is payable, etc. The first proviso to sub-section (2) stipulates that the rate of tax to be specified by the State by the notification contemplated under sub-section (1) shall not exceed the maximum specified, in column (2) of the First Schedule. The second proviso stipulates that the various categories of vehicles specified in the said proviso are liable to be taxed at the rates specified in the Third Schedule. The impugned provision of the

Ordinance 3 of 2006 i.e. Section 2 of the Ordinance provides that, for existing second proviso, sub-section (2) of Section 3 of the Act shall be substituted. In other words, the categories of vehicles, which are required to be taxed at the rates specified in the Third Schedule, underwent a modification. We shall examine what exactly is the modification a little later. Section 5 of the Ordinance amended the heading of the Column (10) of the Third Schedule by substituting the original heading. The original heading of the Column-10 reads as follows:-

> "Omni bus with seating capacity between 8 in all & 10 in all and their chassis."

Now the Legislature by virtue of the Ordinance, amended the said heading and it is substituted as follows:-

> "Omni buses with seating capacity between 8 in all and 10 in all and High End Motor Cabs of the cost of rupees three lakhs fifty thousands and above."

The change brought about in the Ordinance is that until the said amendment, motor vehicles covered under sub-section (2) of Section 3 of the Act, were sought to be taxed on the basis of the description given in the Schedule depending upon the seating capacity or otherwise. By the amendment, the Legislature sought to include a new class of motor vehicles irrespective of the fact whether they answer the description of the existing classes of motor vehicles, contemplated under the Act, or not and the Legislature thought it fit to impose tax on a vehicle, whose capital costs exceeds Rs. 3,50,000/-, and by virtue of amendment to Column-10 of Third Schedule, various rates of taxes for such vehicles are specified. For the sake of demonstration, we may state that for a new vehicle falling in the above category, the rate of tax is 9% of the cost of the vehicle.

By the amendment to the Schedule, various percentages of the cost of the vehicle are stipulated to be the tax, payable by the vehicles

falling under the said category depending upon the age of the vehicle varying from 9 to 10 years. In the case of new vehicles, the rate of tax is 9%; in the case of vehicles aged more than 11 years the rate of tax is 1% and the rate of tax for the vehicles of various ages in between the above-mentioned range was specified in the schedule.

Sri S. Ravi, the learned counsel appearing on behalf of the petitioner in W.P. No. 12542 of 2006 argued that the amendment in substance, retrospectively affects the rights of the petitioner, who is engaged in the business of Tourist Motocab Taxi Services. According to the affidavit filed by the petitioner, the petitioner owns about 114 cars (Light Motor Vehicles) ranging from Maruti 800 to Mercedes Benz. Most of which were acquired by the petitioner prior to the Ordinance and according to law, as it exists on the date of purchase of those vehicles, the petitioner was liable to pay motor vehicle tax periodically and the system of tax introduced now by the amendment (popularly known as 'life tax system') would affect the right of the petitioner and others, who are similarly situated, to pay the motor vehicle tax periodically in small quantum, whereas, by virtue of the amendment, the petitioner is compelled to pay huge amount immediately with reference to each of the vehicles owned by him and consequentially, he would be liable to pay a huge amount of tax with respect to all the vehicles owned by him.

The learned counsel further argued that the tax is confiscating in nature and, therefore, violates Article 14 and 19 (1) (a) of the Constitution of India.

Sri B. Chandrasen Reddy, the learned counsel appearing on behalf of the petitioners in this batch of writ petitions argued that introduction of life tax system to all the vehicles, whose capital costs exceed more than Rs. 3,50,000/-, irrespective of the classification, under which, some vehicles fall under the Motor Vehicles Act, is

arbitrary and, therefore, violative of Article 14 of the Constitution of India.

In support of their submissions, the learned counsel for the petitioners relied upon the judgment of the Supreme Court in **R.C. Tobacco (P) Ltd. V. Union of India**[1], wherein the Supreme Court observed that, the retrospective operation of a fiscal statute is to be found to be unduly oppressive and confiscatory, the same is to be held as unreasonable and unconstitutional.

On the other hand, the learned Government Pleader for Transport, appearing for the respondent Sri Raju submitted that the introduction of the life tax system for motor vehicle was initially made in the year 1987 and such a system was amended once in 1992, later in 2003 and the latest, by the present Ordinance. From time to time, various categories of vehicles by the above-referred amendments, were brought within the fold of the life tax system, under the Motor Vehicles Taxation Act. The amendment of 1992 was challenged before this Court, more or less, on the same ground as urged in the present batch of writ petitions and the same were rejected by a Division Bench of this Court in ***A. Aruna v. State of Andhra Pradesh reported in 2002 (6) ALD 548 (DB)*** and the learned Government Pleader for Transport, therefore, argued that for the same reasons assigned by a Division Bench earlier in repelling the challenge to the extension of life tax system, the present batch of writ petitions are required to be dismissed.

The Division Bench at para 34 of the above cited judgment held as follows:-

> "If the Legislature having taken into account the administrative inconvenience, the hardship caused to the owners of the non-transport two and four wheelers and with an object to reduce administrative expenses in collection of the tax with regard to two and four wheelers, introduced 'life tax' as a method of collecting the tax, such a method cannot be regarded as

arbitrary or irrational. As pointed out supra, in the tax matters, the Legislature has wider discretion in respect of classification of objects, persons or things for the purposes of taxation in the matter of methods as wells as in the matter of rates."

Dealing with the question whether the levy under this Motor Vehicles Taxation Act is a tax or fee, the Division Bench held at para-44 as follows:-

"It needs to be emphasized that the motor vehicle tax is a tax and not a fee. The concept of quid pro quo, strictly speaking, is a lien to the principles of taxation. As long as the motor vehicle tax remains to be compensatory and regulatory, the legislature would be justified and competent to evolve method or modes of levy of tax and collection of the same. The levy of a flat rate of tax is therefore within the competence of the Legislature and such method adopted by the competent Legislature cannot be condemned as arbitrary or unreasonable. The point is that the levy of flat rate of tax would not denude the motor vehicle tax being compensatory and regulatory. Under the impugned provision, levy of tax is at a flat rate with a minimum amount payable under each category of vehicles specified in the III Schedule. The value of the vehicle depends upon its technological sophistication and, it is trite, more sophisticated motor vehicles require better roads conditions and keeping that in mind and to achieve that goal in a course of time if the law-maker levies higher tax on the owners of such vehicles, such a measure would not in any way violate Article 14 postulates nor such a measure could be condemned as an instance of individious discrimination. The reviewing Court in the field taxation cannot assume the role of an operating surgeon to placate a deceased microscopic seed of discrimination because the law permits understandably and for social and economic good of the people a wide latitude and discretion to the law makers in the field of taxation. So long as the tax collected on motor vehicles in the field of taxation. So long as the tax collected on motor vehicles is utilized for the purpose of maintenance and construction of roads and providing other infrastructural facilities only, such a tax under no circumstances be regarded as non-compensatory and non-regulatory simply because, the law-maker has devised different measures and methods to levy motor vehicle tax on different categories of motor vehicles. The law does not insist uniformity either in methods

> of rates of tax. Therefore, mere difference in either methods of collection of tax or rates of tax with regard to different categories of motor vehicles will not per se result in an individious discrimination."

The learned Government Pleader also relied upon a judgment of Supreme Court in **State of Tamilnadu v. M. Krishnappan**[2] . The Supreme Court in the said case was dealing with the levy of lifetime tax of motor vehicles in the State of Tamilnadu, which was upheld by the Supreme Court.

In ***R.C. Tobacco (P) Ltd's case*** (1st supra) the Supreme Court was dealing with the legality of the notification issued under Central Excise Act. Briefly stated, in the year 1997, the Government of India had announced a separate industrial policy for the north-eastern region of the country containing certain incentives including exemption of excise duty, provided, such goods were produced by new industrial units, which commenced their commercial production on or after 24.12.1997 and were located in the defined areas specified in the annexure to the notification. The exemption was to be for a period of 10 years from the date of publication of the notification or from the date of commencement of commercial production, whichever was later. However, by another notification dated 31.12.1999, the abovementioned excise exemption was withdrawn by the Government of India with reference to cigarettes. However, the exemption was once again re-introduced on
17-1-2000. It was in the background of the above facts, the issues are, whether there could be retrospective removal of a benefit consciously granted by the State and such a retrospective withdrawal would violate the Articles 14 and 19 of the Constitution of India. It was in this context, the Supreme Court has observed at paras 20 and 21 of the said Judgment as follows:-

> "The competence of Parliament and the State Legislatures to

repeal, amend or supersede an exemption notification is unquestionable. The power to do so retrospectively cannot be and is also not doubted. The limitation on this power is that the legislation must not conflict with other provisions of the Constitution. As far as fiscal legislation is concerned, the limitation is implicit in Article 265 of the Constitution, which provides that no tax shall be levied or collected except by authority of law. As was held by this Court in Chhotabhai Jethabhai Patel and Co. v. Union of India (1962 Supp (2) SCR 1: AIR 1962 SC 1006)

"If by reason of Article 265 every tax has to be imposed by 'law' it would appear to follow that it could only be imposed by a law which is valid by conformity to the criteria laid down in the relevant articles of the Constitution. These are that the law should be (1) within the legislative competence of the legislature being covered by the legislative entries in Schedule VII of the Constitution; (2) the law should not be prohibited by any particular provision of the Constitution such as, for example, Articles 276(2), 286 etc. and (3) the law or the relevant portion thereof should snot be invalid under Article 13 for repugnancy to those freedoms which are guaranteed by Part III of the Constitution which are relevant to the subject matter of the law."

A law cannot be held to be unreasonable merely because it operates retrospectively. Indeed even judicial decisions are in a sense retrospective. When a statute is interpreted by a Court, the interpretation is, by fiction of law, deemed to be part of the statute from the date of its enactment. The unreasonability must lie in some other additional factors. The retrospective operation of a fiscal statute would have to be found to be unduly oppressive and confiscatory before it can be held to be so unreasonable as to violate constitutional norms.

"Where for instance, it appears that the taxing statute is plainly discriminatory, or provides no procedural machinery for assessment and levy of the tax, or that it is confiscatory, courts would be justified34 in striking down the impugned statute as unconstitutional. In such cases, the character of the material provisions of the impugned statute is such that the court would feel justified in taking the view that, in substance, the taxing statute is a cloak adopted by the legislature for achieving its confiscatory purposes" (See Rai Ramkrishna v. State of Bihar (1964) 1 SCR 897 : AIR 1963

SC 1667), SCR p.910).

> The question to be answered therefore is whether Section 154, which is in terms retrospective, is *ex facie* discriminatory, or so unreasonable or confiscatory that it violates Articles 14 and 19 of the Constitution. "

We are of the opinion that the submission made by Sri S. Ravi, learned counsel for the petitioner in of the writ petitions that the impugned Ordinance is retrospective in operation, cannot be accepted. A retrospective law is one, which seeks to alter the rights and obligations of the Subject with a date, anterior to the date of the coming into force of the said law. The owners of the motor vehicles do not have any constitutional right to be taxed in a particular manner; that the submission they were being taxed in a particular manner prior to the amendment and, therefore, they have right to have same system of taxation continued, is, in substance, nothing but, pleading *estoppel* against the Legislature.

By the impugned Ordinance, the petitioners are taxed for using or keeping for use of the motor vehicle in a public place, in a manner different than what they were subjected to, for the period prior to coming into force of the Ordinance. All that the Ordinance seeks to achieve is to alter the existing mode of collection of tax from periodical collection to that of a one-time collection for the whole life span of the said motor vehicle. Obviously, recognizing the fact that the motor vehicles, which have been put to use prior to the date of commencement of the Act, would have already suffered a tax under the said Act, the Legislature imposed a lesser burden of tax on the older vehicles than the new vehicles. The scheme of the amendment of Sub-section 2 of Section 3 proviso r/w the amendment to III Schedule clearly indicates that older the vehicle, falling under the category, which is in question before us (whose capital is more than Rs. 3,50,000/-,) the lesser is the rate of tax.

In the circumstances, we reject the submission that the Ordinance, in substance, retrospectively affect the rights of the petitioners, as the same is without any basis in facts. Therefore, the further question of examining, whether such a tax is to be found unduly oppressive or confiscatory, in our view, does not arise.

Even assuming for the sake of argument that the impugned Ordinance is in retrospective operation as contended by the learned counsel for the petitioners, such a law will not automatically become unconstitutional. As pointed out by the Supreme Court at para-21 in ***R.C. Tobbaco (P) Ltd's case*** (1st supra) that a law cannot be held unreasonable, merely because it operates retrospectively. The unreasonability must lie in some other additional factors. No such additional factor is brought to our notice to demonstrate that the impugned Ordinance is unreasonable and, therefore, violative of Article 14 of the Constitution of India, affecting the petitioners right as guaranteed under Article 19 (1) (g) of the Constitution of India, except stating that the petitioners would have to pay heavy amount of tax with respect to each of the vehicles owned by them immediately, whereas prior to the amendment the owners of the vehicles (which fell under the said Clause, whose capital costs is less than Rs. 3,50,000/-) could pay the tax periodically during the whole life time of the vehicle.

The shift, in the legislative policy of collecting the one-time tax on the motor vehicles, from the system of collecting periodical tax, as already noticed, was upheld by a Division Bench of this Court and also the Supreme Court, as constitutionally permissible legislative exercise. Logically it follows that if such an exercise is constitutionally permissible with one class of motor vehicles, the same should be permissible with any other class of motor vehicles.

In the circumstances, we do not see any merits in the batch of writ petitions and the same are, therefore, dismissed. No costs.

_____ J.

CHELAMESWAR, J

_____ D. APPA

RAO ,J

10th August, 2006

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[1] (2005) 7 SCC 725

[2] (2005) 4 SCC 53